

1 Heather M. O'Shea (*Pro Hac Vice*)  
hoshea@jonesday.com  
2 JONES DAY  
77 West Wacker Drive  
3 Suite 3500  
Chicago, IL 60601.1692  
4 Telephone: +1.312.269.4009  
Facsimile: +1.312.782.8585

5  
6 Jason C. Wright (State Bar No. 261471)  
Christopher K. Spiers (State Bar No. 300613)  
jcwright@jonesday.com  
7 JONES DAY  
555 South Flower Street  
8 Fiftieth Floor  
Los Angeles, CA 90071.2452  
9 Telephone: +1.213.489.3939  
Facsimile: +1.213.243.2539

10  
11 Stephanie A. Kortokrax (*Pro Hac Vice*)  
skortokrax@jonesday.com  
JONES DAY  
12 325 John H. McConnell Boulevard  
Suite 600  
13 Columbus, OH 43215.2673  
Telephone: +1.614.469.3939  
14 Facsimile: +1.614.461.4198

15 Attorneys for Defendants  
Eisenhower Medical Center, Eisenhower  
16 Medical Associates, Inc. and Monica Khanna,  
M.D.

17  
18 **UNITED STATES DISTRICT COURT**  
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 United States of America, and State of  
California, *ex rel.* David Hong,

21 Relator,

22  
23 v.

24 Eisenhower Medical Center,  
Eisenhower Medical Associates, Inc.,  
and Monica Khanna, M.D.,

25 Defendants.  
26  
27  
28

Case No. 5:18-cv-02667-RGK-KKx  
Hon. R. Gary Klausner

**[PROPOSED] STIPULATED  
PROTECTIVE ORDER**

1           **I. PURPOSES AND LIMITATIONS**

2           Relator David Hong and Defendants Eisenhower Medical Center,  
 3 Eisenhower Medical Associates, Inc., and Monica Khanna, M.D. (collectively with  
 4 Relator referred to as “the Parties”) hereby stipulate to and petition the Court to  
 5 enter the following Stipulated Protective Order. The Parties acknowledge that this  
 6 Order does not confer blanket protections on all disclosures or responses to  
 7 discovery and that the protection it affords from public disclosure and use extends  
 8 only to the limited information or items that are entitled to confidential treatment  
 9 under the applicable legal principles. The Parties further acknowledge, as set forth  
 10 in Section 13.3, below, that this Stipulated Protective Order does not entitle them to  
 11 file confidential information under seal; Civil Local Rule 79-5 sets forth the  
 12 procedures that must be followed and the standards that will be applied when a  
 13 Party seeks permission from the Court to file material under seal.

14           **II. GOOD CAUSE STATEMENT**

15           Disclosures and discovery activity in this action are likely to involve  
 16 production of confidential, proprietary, or protected health information for which  
 17 special protection from public disclosure and from use for any purpose other than  
 18 this litigation may be warranted. The Parties anticipate that such confidential and  
 19 proprietary materials and information may consist of, among other things:  
 20 employee, personnel, commercial, financial, or business information or agreements,  
 21 trade secrets, or patient health records and financial information, including patient  
 22 health information that may be subject to the provisions of the Privacy Act, 5  
 23 U.S.C. § 552a, the provisions of 45 C.F.R. §§ 164.102-164.534, the provisions of  
 24 42 U.S.C. § 1306, Cal. Civ. Code §§ 56 *et seq.*, or other privacy prohibitions.  
 25 Accordingly, a protective order for such information is justified in this matter to  
 26 adequately protect information the Parties may use in preparation for, and in the  
 27 conduct of, trial. It is the intent of the Parties that designations will be made in  
 28 good faith for materials that are confidential and non-public, and there is good

1 cause why it should not be part of the public record in this case.

### 2 **III. DEFINITIONS**

3 3.1 Action: this pending federal lawsuit, entitled *United States of America,*  
4 *and State of California, ex rel. David Hong, Relator, v. Eisenhower Medical*  
5 *Center, et al.*, Case No. 5:18-cv-02667-RGK-KKx.

6 3.2 Challenging Party: a Party that challenges the designation of  
7 information or items under this Order.

8 3.3 “CONFIDENTIAL” information or items: information (regardless of  
9 how it is generated, stored or maintained) or tangible things that qualify for  
10 protection under Federal Rule of Civil Procedure 26(c).

11 3.4 Counsel: Outside Counsel and In-house Counsel (as well as their  
12 support staff) in this Action.

13 3.5 Designating Party: a Party or Non-Party to this Action that designates  
14 information or items that it produces in disclosures or in responses to discovery as  
15 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
16 ONLY.”

17 3.6 Disclosure or Discovery Material: all items or information, regardless  
18 of the medium or manner in which it is generated, stored, or maintained (including,  
19 among other things, testimony, transcripts, and tangible things), that are produced  
20 or generated in disclosures or responses to discovery in this Action.

21 3.7 Expert: a person with specialized knowledge or experience in a matter  
22 pertinent to the litigation who has been retained by a Party or its Counsel to serve as  
23 an expert witness or as a consultant in this Action.

24 3.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
25 information or items: extremely sensitive CONFIDENTIAL information or items,  
26 the producing Party reasonably believes that the disclosure of such discovery  
27 material is likely to cause: economic harm, disclosure of highly-sensitive patient  
28 information, or significant competitive disadvantage to the Producing Party.

1           3.9    In-house Counsel: attorneys who are employees of a Party. In-house  
2 Counsel does not include Outside Counsel.

3           3.10   Non-Party: any natural person, partnership, corporation, association, or  
4 other legal entity not named as a Party to this Action.

5           3.11   Outside Counsel: attorneys who are not employees of a Party but are  
6 retained to represent or advise a Party.

7           3.12   Party: any party to this Action, including all of its officers, directors,  
8 employees.

9           3.13   Producing Party: a Party that produces Disclosure or Discovery  
10 Material in this Action.

11           3.14   Professional Vendors: persons or entities that provide litigation  
12 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
13 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
14 and their employees and subcontractors.

15           3.15   Protected Material: any Disclosure or Discovery Material that is  
16 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL –  
17 ATTORNEYS’ EYES ONLY.”

18           3.16   Receiving Party: a Party that receives Disclosure or Discovery  
19 Material from a Producing Party.

#### 20       **IV.   SCOPE OF PROTECTED INFORMATION**

21           4.1    General Scope. The protections conferred by this Stipulation and  
22 Order cover not only Protected Material (as defined above), but also: (1) any  
23 information copied or extracted from Protected Material; (2) all copies, excerpts,  
24 summaries, or compilations of Protected Material; and (3) any testimony,  
25 conversations, or presentations by Parties or their Counsel that might reveal  
26 Protected Material.

27           4.2    Limitations on Scope. The protections conferred by this Stipulation  
28 and Order do not cover the following information: (a) any information that is in the

1 public domain at the time of disclosure to a Receiving Party or becomes part of the  
 2 public domain after its disclosure to a Receiving Party as a result of publication not  
 3 involving a violation of this Order, including becoming part of the public record  
 4 through trial or otherwise; (b) that is lawfully acquired by or known to the  
 5 Receiving Party independent of the Producing Party; (c) with the consent of the  
 6 Producing Party; or (d) pursuant to a court order.

7 4.3 Use at Trial. Any use of Protected Material at trial shall be governed  
 8 by orders of the trial judge. This Order does not govern the use of Protected  
 9 Material at trial.

## 10 **V. DURATION**

11 All provisions of this Order restricting the use of documents designated  
 12 pursuant to this Order shall continue to be binding after the conclusion of the  
 13 litigation unless otherwise agreed to in writing or ordered by the court. Following  
 14 the final disposition of this action, the parties shall comply with their obligations as  
 15 detailed in section XIV below.

## 16 **VI. DESIGNATING PROTECTED MATERIAL**

17 6.1 Designating Material for Protection. A Designating Party may  
 18 designate for protection under this Order only those parts of material, documents,  
 19 items, or oral or written communications that qualify as “CONFIDENTIAL” or  
 20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

21 6.2 Manner and Timing of Designations. Except as otherwise provided in  
 22 this Order (or as otherwise stipulated or ordered), Disclosure or Discovery Material  
 23 that qualifies for protection under this Order should be clearly so designated before  
 24 the material is disclosed or produced.

25 Designation in conformity with this Order requires:

26 (a) *for information in documentary form* (e.g., paper or electronic  
 27 documents, but excluding transcripts of depositions or other pretrial or trial  
 28 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” or

1 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that  
 2 contains Protected Material. If only a portion or portions of the material on a page  
 3 qualifies for protection, the Producing Party must clearly identify the protected  
 4 portion(s) (e.g., by making appropriate markings in the margins) and must specify,  
 5 for each portion, the level of protection being asserted.

6 A Party or Non-Party that makes original documents or materials available  
 7 for inspection need not designate them for protection until after the inspecting Party  
 8 has indicated which material it would like copied and produced. During the  
 9 inspection and before the designation, all of the material made available for  
 10 inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
 11 ONLY.” After the inspecting Party has identified the documents it wants copied  
 12 and produced, the Producing Party must determine which documents, or portions  
 13 thereof, qualify for protection under this Order. Then, before producing the  
 14 specified documents, the Producing Party must affix the appropriate legend  
 15 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
 16 ONLY”) to each page that contains Protected Material. If only a portion or portions  
 17 of the material on a page qualifies for protection, the Producing Party also must  
 18 clearly identify the protected portion(s) (e.g., by making appropriate markings in  
 19 the margins) and must specify, for each portion, the level of protection being  
 20 asserted.

21 (b) *for testimony given in deposition or in other pretrial or trial*  
 22 *proceedings*, that the Designating Party identifies on the record, before the close of  
 23 the deposition, hearing, or other proceeding, all protected testimony and specify the  
 24 level of protection being asserted. When it is impractical to identify separately each  
 25 portion of testimony that is entitled to protection and it appears that substantial  
 26 portions of the testimony may qualify for protection, the Designating Party may  
 27 invoke on the record (before the deposition, hearing, or other proceeding is  
 28 concluded) a right to have up to 28 days from the receipt of the final transcript to

1 identify the specific portions of the testimony as to which protection is sought and  
2 to specify the level of protection being asserted. Until 28 days from the receipt of  
3 the final transcript of testimony has passed, the deposition shall be presumed  
4 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Only those  
5 portions of the testimony that are appropriately designated for protection within the  
6 28 days shall be covered by the provisions of this Stipulated Protective Order. A  
7 Party shall give the other Party notice if it reasonably expects a deposition, hearing,  
8 or other proceeding to include Protected Material so that the other Party can ensure  
9 that only authorized individuals who have signed the “Acknowledgment and  
10 Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of  
11 a document as an exhibit at a deposition shall not in any way affect its designation  
12 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
13 ONLY.”

14 Transcripts containing Protected Material shall have an obvious legend on  
15 the title page that the transcript contains Protected Material, and the title page shall  
16 be followed by a list of all pages (including line numbers as appropriate) that have  
17 been designated as Protected Material and the level of protection being asserted by  
18 the Designating Party. The Designating Party shall inform the court reporter of  
19 these requirements. Any transcript that is prepared before the expiration of a 28-  
20 day period for designation shall be treated during that period as if it had been  
21 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its  
22 entirety unless otherwise agreed. After the expiration of that period, the transcript  
23 shall be treated only as actually designated.

24 (c) *for information produced in some form other than documentary and*  
25 *for any other tangible items*, that the Producing Party affix in a prominent place on  
26 the exterior of the container or containers in which the information or item is stored  
27 the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
28 EYES ONLY.” If only a portion or portions of the information or item warrant



1 protection, the Producing Party, to the extent practicable, shall identify the  
 2 protected portion(s) and specify the level of protection being asserted.

3 6.3 Inadvertent Failures to Designate. Inadvertent or unintentional  
 4 production of documents without prior designation shall not be deemed a waiver, in  
 5 whole or in part, of the right to designate documents as otherwise allowed by this  
 6 Order. Should a Producing Party discover that an inadvertent or unintentional  
 7 production of documents was made without the proper designation, the Producing  
 8 Party shall immediately notify the Receiving Party and produce properly marked  
 9 replacement copies as soon as practicable.

## 10 **VII. CHALLENGES TO CONFIDENTIAL DESIGNATION**

11 7.1 Timing for Challenges. Challenges to the designation of documents  
 12 may be made at any time that is consistent with the Court's Scheduling Order and  
 13 are not waived by the failure to raise the challenge at the time of initial disclosure  
 14 or designation.

15 7.2 Procedures for Challenges to Designations. Any designation made  
 16 pursuant to this Order is subject to good faith challenges. The Challenging Party  
 17 shall initiate the dispute resolution process in Local Rules 37-1 and 37-2. Any  
 18 motion challenging or seeking to retain a Party's designation of material as  
 19 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
 20 ONLY" must be brought in strict compliance with Local Rules 37-1 and 37-2  
 21 (including the Joint Stipulation requirement).

22 (a) The burden of proving the necessity of a "CONFIDENTIAL" or  
 23 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" remains with the  
 24 Designating Party. Frivolous challenges, and those made for an improper purpose  
 25 (e.g., to harass or impose unnecessary expenses and burdens on other Parties) may  
 26 expose the Challenging Party to sanctions.

27 (b) Notwithstanding any challenge to the designation of documents, all  
 28 material previously designated under the terms of this Order shall continue to be



1 treated as subject to the full protections of this Order until one of the following  
 2 occurs:

3 1. the Designating Party withdraws such designation in writing or  
 4 otherwise waives the designation;

5 3. the Court rules that the documents should no longer be  
 6 designated as “CONFIDENTIAL” or “HIGHLY  
 7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

#### 8 **VIII. ACCESS TO AND USE OF PROTECTED MATERIAL**

9 8.1 Basic Principles. A Receiving Party may use Protected Material that is  
 10 disclosed or produced by another Party or by a Non-Party in connection with this  
 11 Action only for prosecuting, defending, or attempting to resolve this Action. Such  
 12 Protected Material may be disclosed only to the categories of persons and under the  
 13 conditions described in this Order. When the litigation has been terminated, a  
 14 Receiving Party must comply with the provisions of section XIV below.

15 Protected Material must be stored and maintained by a Receiving Party at a  
 16 location and in a manner that ensures that access is limited to the persons  
 17 authorized under this Order.

18 8.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
 19 otherwise ordered by the Court or permitted in writing by the Designating Party, a  
 20 Receiving Party may disclose any information or item designated  
 21 “CONFIDENTIAL” only to:

- 22 (a) the Receiving Party’s Outside Counsel and employees of Outside  
 23 Counsel who have responsibility for the preparation and trial of the  
 24 lawsuit;
- 25 (b) Parties and employees of a Party to this Order to whom disclosure is  
 26 reasonable necessary for this Action;
- 27 (c) court reporters and videographers engaged for depositions, and those  
 28 persons, if any, specifically engaged for the limited purpose of making

1 photocopies of documents or otherwise assisting in e-discovery;

2 (d) Experts;

3 (e) the Court, jury, and court personnel;

4 (f) mock jurors or trial consultants who have agreed to be bound by the  
5 provisions of the Order by signing a copy of Exhibit A;

6 (g) any mediator or settlement officer who is assigned to hear this matter,  
7 and his or her staff, subject to their agreement to maintain  
8 confidentiality to the same degree as required by this Order;

9 (h) the author(s), addressee(s), or recipient(s) of the “CONFIDENTIAL”  
10 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
11 discovery material; and

12 (i) other persons only upon consent of the Producing Party or upon order  
13 of the Court and on such conditions as are agreed to or ordered.

14 8.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES

15 ONLY” Information or Items. The Parties shall not disclose or permit the  
16 disclosure of any documents designated “HIGHLY CONFIDENTIAL-  
17 ATTORNEYS’ EYES ONLY” to any other person or entity except as set forth in  
18 subparagraphs (a)-(i) below. Subject to these requirements, the following  
19 categories of persons may be allowed to review documents which have been  
20 designated “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY” pursuant  
21 to this Order:

22 (a) the Receiving Party’s Outside Counsel, and such Outside Counsel’s  
23 paralegals and staff, and any copying or clerical litigation support  
24 services working at the direction of such counsel, paralegals, and staff;

25 (b) In-house Counsel for the Receiving Party, who are members of at least  
26 one state bar in good standing, with responsibility for managing this  
27 litigation;

28 (c) Experts;

- (d) the author(s), addressee(s), or recipient(s) of the HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY information;
- (e) court reporters, stenographers, and videographers retained to record testimony taken in this action;
- (f) the Court, jury, and court personnel;
- (g) any mediator or settlement officer who is assigned to hear this matter, and his or her staff, subject to their agreement to maintain confidentiality to the same degree as required by this Order;
- (h) mock jurors or trial consultants who have agreed to be bound by the provisions of the Protective Order by signing a copy of Attachment A; and
- (i) other persons only upon consent of the Producing Party or upon order of the Court and on such conditions as are agreed to or ordered.

#### **IX. PROTECTED MATERIALS SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION**

9.1 Other Litigation. If a Party is served with a subpoena or a court order issued in a separate matter or litigation that compels disclosure of any information or items designated in this Action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

- (a) promptly notify, and in not less than 5 days, in writing the Designating Party (such notification shall include a copy of the subpoena or court order); and
- (b) promptly notify the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to a Protective Order.

The Designating Party shall respond to the Party receiving the subpoena within fifteen (15) business days of receiving the written notice. No production or other disclosure of such information pursuant to the subpoena or other process shall

1 occur until the deadline for the Producing Party to respond to the written notice of  
2 the subpoena has passed.

3 9.2 Lawful Directive by Another Court. If the Designating Party timely  
4 seeks a protective order, the Party served with the subpoena or court order shall not  
5 produce any information designated in this Action as “CONFIDENTIAL” or  
6 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a  
7 determination by the court from which the subpoena or order issued, unless the  
8 Party has obtained the Designating Party’s permission. The Designating Party shall  
9 bear the burden and expense of seeking protection in that court of its  
10 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
11 ONLY” material and nothing in these provisions should be construed as authorizing  
12 or encouraging a Receiving Party in this Action to disobey a lawful directive from  
13 another court.

14 **X. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**  
15 **PRODUCED IN THIS LITIGATION**

16 A Non-Party producing information or material voluntarily or pursuant to a  
17 subpoena or court order may designate such material or information pursuant to the  
18 terms of this Order. A Non-Party’s use of this Order to protect its discovery  
19 material does not entitle that Non-Party access to the Protected Material produced  
20 by any Party in this case.

21 **XI. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

22 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
23 Protected Material to any person or in any circumstance not authorized under this  
24 Stipulated Protective Order, the Receiving Party must immediately: (a) notify in  
25 writing the Designating Party of the unauthorized disclosure(s), (b) use its best  
26 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the  
27 person or persons to whom unauthorized disclosures were made of all the terms of  
28 this Order, and (d) request such person or persons to execute the “Acknowledgment

1 and Agreement to Be Bound” that is attached hereto as Exhibit A.

2 **XII. INADVERTENT PRODUCTION OF PRIVILEGED OR**  
 3 **OTHERWISE PROTECTED MATERIAL**

4 12.1 Impact on Privilege. Nothing in the foregoing Order shall require  
 5 production of information that a Party contends is protected from disclosure by the  
 6 attorney-client privilege, the work product immunity, or any other privilege,  
 7 doctrine, right, or immunity.

8 12.2 No Waiver of Privilege. In view of the potential volume of documents  
 9 to be produced in the Action, documents produced may include documents that  
 10 could have been withheld in whole or in part upon the basis of an absolute or  
 11 qualified privilege or some other protection from disclosure. Mere production of all  
 12 or a part of a document shall not constitute a waiver of any privilege, doctrine,  
 13 right, immunity, or other protection (in whole or in part) as to any portion of that  
 14 document, or as to any undisclosed privileged or protected communications or  
 15 information concerning the same subject matter, in this or in any other federal or  
 16 state proceeding.

17 Thus, pursuant to Fed. R. Evid. 502(d), the inadvertent production, or the  
 18 failure to assert work-product immunity, attorney-client privilege, and/or other legal  
 19 privilege over a privileged or work-product-protected document, is not a waiver of  
 20 privilege or protection from discovery in this case or in any other federal or state  
 21 proceeding, in whole or in part. A Producing Party may assert privilege or  
 22 protection over produced documents at any time by notifying the Receiving Party in  
 23 writing of the assertion of privilege or protection in accordance with section 12.3  
 24 below.

25 12.3 Notice of Inadvertent Production.

26 (a) Should any Disclosure or Discovery Material or copies thereof contain  
 27 privileged markings by the Receiving Party, such discovery materials shall instead  
 28 be destroyed, and certified as destroyed, by the Receiving Party to the Producing

1 Party. No use shall be made of the Disclosure or Discovery Material, nor shall they  
2 be disclosed to anyone who did not previously have access to them.

3 (b) If a Producing Party determines that it has produced a privileged or  
4 otherwise protected document, the Producing Party shall provide written notice  
5 requesting the Receiving Party promptly destroy or return the document and all  
6 copies to the Producing Party, except for any pages containing privileged markings  
7 by the Receiving Party, which shall instead be destroyed and certified as such by  
8 the Receiving Party to the Producing Party. After receiving a notice from a  
9 Producing Party, a Receiving Party must promptly destroy or return the document  
10 and all copies to the Producing Party, and may not use or disclose the document or  
11 information identified by the Producing Party until the privilege claim is resolved.  
12 If a Receiving Party disclosed the document or information specified in the notice  
13 before receiving the notice, it must take reasonable steps to retrieve it, and so notify  
14 the Producing Party of the disclosure and its efforts to retrieve the document or  
15 information. The Producing Party may substitute the protected document with a  
16 redacted version that obscures the privileged or otherwise protected information.  
17 The Producing Party must preserve the specified document or information until the  
18 privilege claim is resolved.

19 (c) The notices referenced in paragraphs 12.3(a) & (b), above, shall be in  
20 writing, shall be served upon Outside Counsel for all parties, and shall contain  
21 information sufficient to:

- 22 1. identify the document, by Bates number (if applicable) or by  
23 identifying information as necessary to locate the document  
24 within the materials produced;
- 25 2. identify the privilege or protection asserted; and
- 26 3. explain the basis for the invocation of the privilege.

27 (d) To be effective, the notice shall be provided within a reasonable time,  
28 but no later than 30 days after a Party discovers the production of the privileged or

1 otherwise protected document.

2       12.4 Challenges to Privilege. If the Receiving Party does not agree with the  
3 privilege claim, then, after the Receiving Party has returned the documents over  
4 which a claim is privilege is asserted, the Parties must attempt to resolve the dispute  
5 in strict compliance with Local Rules 37-1 and 37-2 (including the Joint  
6 Stipulation requirement). If meeting and conferring regarding the privilege claim  
7 pursuant to Local Rule 37-1 does not resolve the privilege claim, the Parties may  
8 request in their Joint Stipulation that the Court review the challenged privileged  
9 documents in camera under seal for a determination of the privilege claim. Any  
10 Party in possession of the information must preserve the information until the  
11 privilege claim is resolved. *See* Fed. R. Civ. P. 26(b)(5)(B). The burden of proving  
12 the privilege claim remains with the Producing Party. Any briefing by any Party  
13 also shall not publically disclose the information claimed to be privileged.

14       12.5 Reasonableness of Procedure. The Parties agree that such procedures  
15 constitute reasonable and prompt steps to prevent disclosure and to address the  
16 inadvertent disclosure, pursuant to the Federal Rules of Civil Procedure. The  
17 Parties further agree that employing electronic keyword searching to identify and  
18 prevent disclosure of privileged material constitutes “reasonable steps to prevent  
19 disclosure” under Federal Rule of Evidence 502(b)(2).

### 20 **XIII. MISCELLANEOUS**

21       13.1 Right to Further Relief. Nothing in this Order abridges the right of any  
22 person to seek its modification by the Court in the future.

23       13.2 Right to Assert Other Objections. By stipulating to the entry of this  
24 Protective Order, no Party waives any right it otherwise would have to object to  
25 disclosing or producing any information or item on any ground not addressed in  
26 this Stipulated Protective Order. Similarly, no Party waives any right to object on  
27 any ground to use in evidence of any of the material covered by this Protective  
28 Order.



1           13.3 Filing Protected Material. In the event a Party seeks to file any  
 2 material that is subject to protection under this Order with the Court, that Party  
 3 shall take appropriate action to insure that the documents receive proper protection  
 4 from public disclosure including: (1) filing a redacted document with the consent of  
 5 the Party or Non-Party who designated the document as “CONFIDENTIAL” or  
 6 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”; (2) where  
 7 appropriate (e.g., in relation to discovery and evidentiary motions), submitting the  
 8 documents solely for in camera review (after receiving authorization from the  
 9 Court); or (3) where the preceding measures are not adequate, seeking permission  
 10 to file the document under seal pursuant to the procedural steps set forth in Civil  
 11 Local Rule 79-5. Protected Material may only be filed under seal pursuant to a  
 12 Court order authorizing the sealing of the specific Protected Material at issue.  
 13 Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request  
 14 establishing that the Protected Material at issue is privileged, protectable as a trade  
 15 secret, or otherwise entitled to protection under the law. If a Receiving Party’s  
 16 request to file Protected Material under seal is denied by the Court, then the  
 17 Receiving Party may file the Protected Material in the public record unless  
 18 otherwise instructed by the Court. Absent extraordinary circumstances making  
 19 prior consultation impractical or inappropriate, the Party seeking to submit the  
 20 document to the Court shall first consult with counsel for the Designating Party to  
 21 determine if some measure less restrictive than filing the document under seal may  
 22 serve to provide adequate protection. This duty exists irrespective of the duty to  
 23 consult on the underlying motion.

24           13.4 HIPAA. A Producing Party may designate discovery material as  
 25 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
 26 ONLY,” if that Party in good faith believes to contain “protected health  
 27 information,” as defined by 45 CFR § 164.501, and/or “individually identifiable  
 28 health information,” as defined by 45 CFR § 160.103, or information that is

1 otherwise protected from disclosure by the Privacy Act, 5 U.S.C. § 552a, or the  
 2 Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191  
 3 (“HIPAA”). Such documents and information are subject to the Standards of  
 4 Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and  
 5 164, promulgated pursuant to the Health Insurance Portability and Accountability  
 6 Act of 1996; California Code §§ 56 *et seq.*; or other similar statutory or regulatory  
 7 privacy protections. The procedures for the protection of such “CONFIDENTIAL”  
 8 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information or  
 9 items as set forth in this Protective Order provide sufficient protection such that this  
 10 Order meets the requirements for a “qualified protective order” under 45 C.F.R.  
 11 § 164.512(e)(1)(v). Parties may not use any produced protected health information  
 12 to contact, either directly or indirectly, any patients or third parties without first  
 13 seeking Court approval in strict compliance with Local Rules 37-1 and 37-2,  
 14 including the Joint Stipulation requirement.

#### 15 **XIV. FINAL DISPOSITION**

16 Within thirty (30) days after the conclusion of the litigation, including  
 17 conclusion of any appeal, all documents treated as “CONFIDENTIAL” or  
 18 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under this Order,  
 19 including copies as defined above, as well as documents residing on discovery  
 20 platforms, shall be returned to the Producing Party unless: (1) the document has  
 21 been entered as evidence or filed (unless introduced or filed under seal); (2) the  
 22 Parties stipulate to destruction in lieu of return; or (3) as to documents containing  
 23 the notations, summations, or other mental impressions of the Receiving Party, that  
 24 Party elects destruction. Notwithstanding the above requirements to return or  
 25 destroy documents, counsel may retain attorney work product including an index  
 26 which refers or relates to information designated under this Order so long as that  
 27 work product does not duplicate verbatim substantial portions of the text of  
 28 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES

1 ONLY” documents. This work product continues to be “CONFIDENTIAL” or  
2 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under the terms of  
3 this Order. Notwithstanding this provision, Parties and their Outside Counsel are  
4 not required to delete information that may reside on their respective electronic  
5 backup systems that are over-written in the normal course of business.

6 IT IS SO STIPULATED, THROUGH OUTSIDE COUNSEL.

7 Dated: July 22, 2020

JONES DAY

8  
9 By /s/ Jason C. Wright

10 Jason C. Wright  
11 Heather M. O’Shea  
12 Attorneys for Defendants  
13 Eisenhower Medical Center, Eisenhower  
14 Medical Associates, and Monica Khanna.

15 Dated: July 22, 2020

HENNIG, RUIZ & Singh

16 By /s/ Sam Brown

17 ROB HENNIG  
18 SAM BROWN  
19 Attorneys for Relator  
20 David Hong

21 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

22 Dated: July 23, 2020

23  
24 By

  
25 Hon. Kenly Kiya Hato  
26 United States Magistrate Judge  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Signature Certification**

Pursuant to Local Rule 5-4.3.4(a)(2), I hereby certify that all other signatories listed, on whose behalf this filing is submitted, concur with the contents of this filing and have authorized the filing.

/s/ Jason C. Wright  
Jason C. Wright

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

The undersigned hereby acknowledges that he or she has read the Stipulated Protective Order dated \_\_\_\_\_, in the above captioned action, understands the terms thereof, and agrees to be bound by such terms. The undersigned submits to the jurisdiction of the United States District Court for the Central District of California in matters relating to the Stipulated Protective Order and understands that the terms of said Order obligate him/her to use discovery materials designated CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY solely for the purposes of the above-captioned action, and not to disclose any such confidential information to any other person, firm or concern.

The undersigned acknowledges that violation of the Stipulated Protective Order may result in penalties for contempt of court.

Name: \_\_\_\_\_

Job Title: \_\_\_\_\_

Employer: \_\_\_\_\_

Business Address: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_